HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1354 of 2006

Between:

Sreenidhi Electro Mechanics, rep., by its
Proprietor, M. Upendra Reddy, S/o. M. Papi Reddy,
Aged about 30 years, R/o. 10-10-27/120,
MCH Colony, Malakpet, Hyderabad

... Appellant

And

Union of India, rep. by its Director,
Defence, Metallurgical Research
Laboratories (DMRL), Ministry of
Defence, Kanchanbagh, Hyderabad
and another

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri V. Venkataramana

Counsel for respondent No. 1 : Shri A. Rajasekhar Reddy

Counsel for respondent No. 2 : Shri Wajid Ali Kamil

January 04, 2007

Per G.S. Singhvi, CJ

Whether the sale order issued in favour of the appellant by Director, Defence Metallurgical Research Laboratory, Hyderabad (for short, 'the Director') could be cancelled without complying with the rules of natural justice is the question which arises for determination in this appeal filed under Clause 15 of the Letters Patent.

In response to tender notice issued by the Director for sale of scrap of Stainless Steel, M.S. scrap etc., the appellant submitted tender dated 10-11-2005 for different quantities of scrap. The Director accepted the tender of the appellant and released stainless steel and metal scrap arising out of condemned unserviceable machines, ferrous and non-ferrous, electrical motors etc. This was conveyed to the appellant vide sale order No.DMRL/MMG/DISP/SALE/10/2005-06, dated 14-11-2005, the relevant portions of which read as under:

"To
M/s.Sreenidhi Electro Mechanics,
S.No.4, # 16-10-27/120,
Opp:Sreevani Degree College,
MCH Colony, Malakpet,
HYDERABAD-500 036.

Sub:-Confirmation of acceptance of your tender offer for sale of stainless steel scrap & M.S. scrap.

Ref:-(1) Tender Enquiry No.DMRL/MMG/DISP/TENDER/10/2005-06, dt.28-10-2005.
(2) Your quotation No.SNEM/DMRL/SCRAP/164/05-06, dt.10-11-2005.

Sir,

Director, DMRL is pleased to confirm the acceptance of tender offer for the subject item, as is where is basis.

2. Director, DMRL, is pleased to release the sale order on you for the following item which may be lifted from DMRL in one lot by paying the full amount of Rs.22,00,000/- and VAT 4% or as applicable as per Govt. Tax Rules within 30 days from the date of sale order.

Sl.No.	Nomenclature	Quantity	Rate	Total Amount
1.	Stainless Steel Scrap	25 M.Tons (approx)	Rs.46-00	Rs.11,50,000/-

2.	Metal Scrap arising out of Condemned, Unserviceable Machines, Ferrous and Non-Ferrous & Electrical Motors etc.	50 M.Tons (approx)	Rs.21-00	Rs.10,50,000/-
		Total amount		Rs.22,00,000/-

3. Payment for the cost of stores/machines should be made through Demand Draft in favour of Director, DMRL, Hyderabad along with separate Demand Draft for sales tax amount in favour of Commercial Tax Officer, Malakpet Circle, Hyderabad, both payable at Hyderabad.

4. Terms and conditions of Sale: Specific terms and conditions for this sale order are given in Appendix "A".

5. Scrap should be lifted up to ground level. Excess quantity will be issued on payment basis.

6. EMD: A Demand Draft of Rs.2,20,000/- (Rupees Two Lakhs Twenty Thousand only) submitted by you towards items above quoted by you kept as security deposit for this stores.

7. PAYMENT

(i) Last date of making payment without penalty (excluding taxes and duties) is 30 days from the date of issue of sale order.

(ii) Last date of making payment with 1% penalty/week (excluding taxes and duties) will be for a period of maximum 14 days after 30 days of permissible period."

The appellant deposited Rs.22,00,000/- towards EMD vide Demand Draft No.404650, dated 12-12-2005 drawn in favour of the Director, DMRL, Hyderabad and tax amount of Rs.88,000/- vide Demand Draft No.404651, dated 12-12-2005 drawn in favour of Commercial Tax Officer, Malakpet Circle, Hyderabad. Thereafter, the appellant repeatedly represented to the Director to allow it to lift the material, but the latter did not respond till he sent

communication dated 22-12-2005 for cancellation of the sale order. The relevant extracts of that letter are reproduced below:

> "The Sales Order No.DMRL/MMG/DISP/SALE/10/ 2005-2006 dated 14-11-2005 for sale of Stainless Steel Scrap and M.S. Scrap is hereby cancelled due to administrative reasons.
>
> Original Sales Order sent to you may be returned back to this laboratory.
>
> The following Demand Drafts sent by you are returned herewith.
>
> 1) D.D. No.404650 dated 12-12-2005 – for Rs.22,00,000/- issued by Punjab National Bank, Hyderabad.
> 2) D.D.No.404651 dated 12-12-2005 – for Rs.88,000/- issued by Punjab National Bank, Hyderabad."

The appellant challenged the decision of the Director in Writ Petition No.9964 of 2006 on the ground of violation of the rules of natural justice and arbitrary exercise of power. In the counter-affidavits filed by Dr.A.K.Tripathi, Joint Director, DMRL, it was pleaded that M/s.Ruby and Company (respondent No2.), which had participated in the tender floated by M/s.MSTC, Vizag on 12-7-2005 quoted Rs.35,786.92p. per Metric Ton in respect of lot No.1 comprising of 30 Metric Tons of scrap, but did not deposit the required amount of EMD necessitating rejection of its offer. Thereafter, fresh tenders were invited and the offer of the petitioner (appellant herein) was accepted. The deponent further averred that the decision to cancel the sale order was taken due to administrative reasons. According to Sri Tripathi, there were some complaints of connivance between the petitioner and Store officials of DMRL and, therefore, it was decided to cancel the sale order.

The learned Single Judge referred to the pleadings of the parties and the record produced by the counsel for respondent No.1 and held that the cancellation of the sale order by the Director cannot be invalidated because action was taken in the backdrop of the

complaint made by respondent No.2 and the preliminary enquiry report submitted by the Board of Officers.

Sri V.Venkata Ramana argued that the order under challenge should be set aside because the reasons assigned by the learned Single Judge for refusing to quash the decision of the Director to cancel the sale order are irrelevant. He submitted that the preliminary enquiry report dated 6-4-2006 submitted by the Board of Officers did not contain any finding which could justify a conclusion that the appellant had manipulated the issue of sale order dated 14-11-2005 and no other material was available with the Director, which could be made basis for cancellation of the sale order. He then argued that even if the preliminary enquiry report contained a finding adverse to the appellant, the same could not have been relied for cancellation of the sale order without complying with the basics of natural justice or the rule of audi alteram partem. Learned counsel emphasised that mere suspicion of manipulation by the officials of the stores department of DMRL did not warrant cancellation of sale order without holding an inquiry in consonance with the rules of natural justice.

Sri A.Rajashekar Reddy, learned Assistant Solicitor General fairly stated that the preliminary enquiry report dated 6-4-2006 does not contain a specific finding that the appellant was responsible for manipulating the issue of sale order dated 14-11-2005. Sri Reddy also conceded that before cancelling the sale order, the Director did not hold any inquiry or gave an action-oriented notice and opportunity of hearing to the representative of the appellant. He, however, defended the decision of the Director and the order of the learned Single Judge by arguing that the sale order was cancelled in the backdrop of the serious allegations levelled by respondent No.2. He then submitted that even if notice had been given to the appellant,

no useful purpose would have been served because the manipulation made by the officials of the Store Department, which led to the acceptance of the offer of the appellant was writ large on the face of the record.

Sri Wajid Ali Kamil, learned counsel for respondent No.2 submitted that the learned Single Judge rightly declined to interfere with the cancellation of the sale order because the same was highly detrimental to the public interest. Learned counsel emphasised that there was a difference of almost Rs.14,000/- per Metric Ton between the offer given by his client and the appellant and, therefore, even though the decision of the Director may be contrary to the rules of natural justice, the same should not be annulled by the Court.

We have thoughtfully considered the respective submissions. In our opinion, the reason assigned by the learned Single Judge for declining relief to the appellant is legally unsustainable. Although the affidavits filed by Dr.A.K.Tripathi are conspicuously silent about the background in which the Director decided to cancel the sale order and the stock phrases like 'administrative reasons' and 'exigencies' have been used to justify the cancellation of the sale order, a careful reading of the order under challenge makes it clear that on receipt of an anonymous complaint, the Director got conducted an enquiry through the Board of Officers and then cancelled the sale order issued in favour of the appellant. Undisputedly, the report of the Board of Officers did not contain any adverse finding against the appellant. Therefore, it is not possible to decipher as to how that report could be made basis for taking a decision seriously affecting the right of the appellant to lift the scrap in furtherance of the sale order.

It is also not in dispute that before cancelling the sale order, the Director did not give action-oriented notice and opportunity of hearing

to the appellant to represent its cause. The appellant was neither served with a copy of anonymous complaint nor was it informed about the proposed cancellation of the sale order. Thus, there is no escape from the conclusion that the appellant was condemned unheard. Unfortunately, the learned Single Judge overlooked this vital defect in the decision making process and approved the action of the Director on the spacious ground that there were some irregularities in the issue of the sale order in favour of the appellant. In our considered view, the sale order issued in favour of the appellant, which created a valuable right in its favour, could not have been cancelled without informing it about the proposed cause of cancellation and giving an effective opportunity of hearing.

The applicability of the rules of natural justice to purely administrative action has been recognised by the Supreme Court in several judgments including those of **State of Orissa v. Dr. Binapani Dei**[1], **Bhagat Raja v. Union of India**[2], **A.K. Kraipak v. Union of India**[3], **Maneka Gandhi v. Union of India**[4], **S.L. Kapoor v. Jagmohan**[5], **Swadeshi Cotton Mills v. Union of India**[6] and **Olga Tellis v. Bombay Municipal Corporation**[7]. By applying the ratio of these judgments to the facts of this case, we hold that the cancellation of the sale order issued in favour of the appellant is vitiated due to violation of the rules of natural justice and is liable to be quashed.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. As a sequel to this, the decision of the Director to cancel the sale order issued in favour of the appellant is quashed. However, keeping in view the peculiar facts of this case, we direct the competent authority i.e., the Director to pass fresh order

in the mater within a period of fifteen days from the date of receipt of a copy of this order through the office of Assistant Solicitor General. The representative of the appellant and the complainant are directed to appear before the competent authority on 09-01-2007. The officer concerned shall make available the adverse material to the representative of the appellant by 10-01-2007 and pass appropriate order by 23-01-2007 after hearing the representatives of the parties.

G.S. SINGHVI, CJ

January 04, 2007

C.V. NAGARJUNA REDDY, J

Note: The Court Officer is directed to give attested copies of this order to the learned Assistant Solicitor General and counsel for the parties or their representatives. They should collect the copies of the order by 06-01-2007.

ks

---

[1] AIR 1967 SC 1269
[2] AIR 1967 SC 1606
[3] AIR 1970 SC 150
[4] AIR 1978 SC 597
[5] AIR 1981 SC 136
[6] AIR 1981 SC 818
[7] AIR 1986 SC 180